

DECISION AND REASONS

Dispute Code: CNC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

1. To cancel a Notice to End Tenancy given for Cause; and
2. An order to recover the filing fee paid for this application pursuant to Section 72.

The tenants testified that while their application originally sought a monetary and repair order that they did not wish to proceed with those applications. I accept that the landlord was properly served with the tenant's Application for Dispute Resolution hearing package.

Both parties appeared and gave evidence under oath.

Background, Analysis and Findings

The landlord testified that she issued the Notice to End Tenancy for Cause based repeated late payment of rent and because the tenants put the landlord's property at significant risk, that they engaged in an illegal activity that has or is likely to damage the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that the property is a 134 acre parcel. The landlord testified that the bylaw Enforcement officer attended the rental property and discovered that the tenants were operating a sawmill on the property. The Bylaw officer reported to the landlord that the property was zoned country residential and a sawmill was not allowed under the zoning bylaws. The landlord submitted into evidence an email from the by-law officer setting out his findings. The landlord also submitted photographs taken by the by-law officer of the milling operation. The landlord submits that not only was the sawmilling operation illegal but the grass in the area was very dry and a spark from the

milling operation could have caused a brush fire that could have jeopardized the timber on the property which is owned by the landlord. The landlord estimates that the value of the timber to be in the neighbourhood of 1 million dollars.

Further, the landlord testified that throughout the tenancy the rent was late however, during the past year the tenants have been late paying their rent almost every single month. The landlord's agent testified that each month she has had to contact the tenants to inquire about the rental payment. In some cases the tenants asked that their post-dated cheque not be cashed and they would supply cash instead. In other cases they were asked to hold the cheque and not deposit it. The agent testified that each time there is an excuse to reason why the rent could not be paid on time. The landlord submitted notifications of non-sufficient funds charges from the bank. The landlord testified that in 2009 the rent, due on the 1st of each month, was paid as follows: January 14, March 6, May 11, July 20, August 3 and September 10. The landlord testified that the October rent was paid on time but November rent, due yesterday, has not been paid.

The tenants say they do not wish to cancel the Notice to End Tenancy given for cause they only wish more time to find another rental accommodation. The landlords say they are not prepared to allow any extra time because the tenants have not paid their rent.

The tenants say that as soon as they were advised that the saw mill was illegal they removed it. Further, the tenant say the saw mill was not a fire hazard because the "no burning" restrictions had been lifted. The male tenant testified that he lost his job in 2009 and he was "working with" regarding the rental payments and the landlord agreed to accept late payments. The tenants also say that they were late paying rent only twice since the tenancy began in 2006. The tenants said they were not late at all in 2009. The tenants said they were late twice in 2009. The tenants say they were unable to get in touch with the landlord in order to pay the rent and they have no control over when the landlord deposited the cheque. The tenants say the reason the January rent was returned NSF was because the landlord didn't deposit the cheque until January 14, 2009 at which time the funds were no longer in the account. The tenants say they have

not paid their rent for November pending the outcome of the hearing today because they did not know if they would be staying in the rental unit.

Findings

With respect to the saw mill operation the evidence is that the tenants engaged in an activity on the property that was against the by-laws and was therefore illegal. Further, on a balance of probabilities, I find it reasonable and probable that the saw milling process posed a significant risk that it could damage the landlord's property and/or jeopardize a lawful right or interest of the landlord.

With respect to the late payment of rent, I prefer the evidence of the landlord that the rental payments were made as set out above and that the rent has been late in 2009 on at least six occasions.

As the applicant's claim has been dismissed he is not entitled to recover the filing fee he paid for this application.

At the hearing of this matter the landlord requested an Order of Possession. Having dismissed the tenant's application to cancel the Notice to End Tenancy I will therefore issue the Order of Possession. The effective date on the Notice to End Tenancy would have been October 31, 2009, as that date has now passed the landlord is entitled to an Order of Possession effective 2 days after service of the Order on the tenants.

Conclusion

The landlord is provided with a formal copy of an Order of Possession. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.